

CAUSE NO. 2010-40506

MONICA BAEZ, ELODIA FLORES,
MARY ANN GASPIN, RAYMOND
DEANDA, and ALFRED DEANDA
Plaintiffs

VS.

THE ROMAN CATHOLIC ARCHDIOCESE
OF GALVESTON-HOUSTON
Defendant

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

215th JUDICIAL DISTRICT

PLAINTIFFS' FOURTH AMENDED PETITION

TO THE HONORABLE COURT:

Plaintiffs, MONICA BAEZ, ELODIA FLORES, MARY ANN GASPIN, RAYMOND DEANDA, and ALFRED DEANDA file this their Fourth Amended Petition complaining of and against Defendant, THE ROMAN CATHOLIC ARCHDIOCESE OF GALVESTON-HOUSTON, and for causes of action would respectfully show this Honorable Court as follows:

A. DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190, Plaintiffs intend to conduct discovery under Level 3.

B. PARTIES

2. Plaintiff, MONICA BAEZ, is an individual residing in Tarrant County, Texas. Her Social Security Number is [REDACTED]. Her date of birth is [REDACTED] 1965.

3. Plaintiff, ELODIA FLORES, is an individual residing in Fayette County, Texas. Her Social Security Number is [REDACTED]. Her date of birth is [REDACTED] 1958.

4. Plaintiff, MARY ANN GASPIN, is an individual residing in Chatham County, Georgia. Her Social Security Number is [REDACTED]. Her date of birth is [REDACTED] 1961.

5. Plaintiff, RAYMOND DEANDA, is an individual residing in Washington County, Texas. His Social Security Number is [REDACTED]. His date of birth is [REDACTED] 1949.

6. Plaintiff, ALFRED DEANDA, is an individual residing Bexar County, Texas. His Social Security Number is [REDACTED]. His date of birth is [REDACTED] 1951.

7. Defendant, THE ROMAN CATHOLIC ARCHDIOCESE OF GALVESTON-HOUSTON (hereinafter "Defendant"), an unincorporated association, maintains an office located at 1700 San Jacinto, Houston, Harris County, Texas 77001-0907, has been served and has answered herein.

C. JURISDICTION AND VENUE

8. The court has jurisdiction over this action because the facts giving rise to this action occurred in whole or in part, within Harris County, Texas and the damages sought by Plaintiffs are well in excess of the minimum jurisdictional limits of this Court.

9. Venue is proper in Harris County, because all or a substantial part of the events or omissions giving rise to the claims asserted herein occurred in Harris County, Texas.

D. FACTUAL ALLEGATIONS

10. Lawrence Peguero was ordained as a Roman Catholic priest and was under Defendant Archdiocese's direct supervision, employ and control during all times material to this Petition.

11. During Peguero's tenure as a priest, Defendant Archdiocese placed Peguero at Our Lady of St. John.

12. On information and belief, Defendant Archdiocese allowed and permitted Peguero to have unsupervised and unlimited access to children within the Archdiocese.

13. On information and belief, Defendant Archdiocese also allowed and permitted Peguero to perform priestly functions at Our Lady of St. John. The Defendant Archdiocese had knowledge of Peguero's work at this parish.

14. By allowing Peguero to function as a priest in good standing at Our Lady of St. John in approximately the 1960s and 1970s, Defendant Archdiocese, through its agents affirmatively represented to minor children and their families, including Plaintiffs, that Peguero did not have a history of molesting children, that Defendant Archdiocese did not know or suspect that Peguero had a history of molesting children and that Defendant Archdiocese did not know that Peguero was a danger to children.

15. Defendant Archdiocese was in a specialized position where it had knowledge that Plaintiffs and their families did not. Defendant Archdiocese was in a position to have this knowledge because it was Peguero's employer and because Defendant Archdiocese was responsible for Peguero. Plaintiffs on the other hand were only children. As children, they were not in a position to have information about Peguero's molestation of other children or the Defendant Archdiocese's knowledge of the danger Peguero posed to children.

16. In addition to the representations being made directly to Plaintiffs, Defendant Archdiocese, through its agents made these representations with knowledge and intent that they would be communicated to the minor Plaintiffs through their parents words and actions. The Defendant Archdiocese also had reason to believe that the representations made to Plaintiffs' parents would influence Plaintiffs and particularly that the representations would influence the amount and type of time spent alone with Peguero, Peguero's access to Plaintiffs and Peguero's ability to molest Plaintiffs.

17. Particularly, Defendant Archdiocese knew or should have known that Lawrence Peguero was a child molester and knew or should have known that Peguero was a danger to children before Peguero molested Plaintiffs.

18. Because of the superiority and influence that Defendant Archdiocese had over them, Plaintiffs believed and relied upon these misrepresentations.

19. In reliance upon Defendant Archdiocese's misrepresentations, in approximately the 1960s and 1970s, Lawrence Peguero molested the minor Plaintiffs.

20. Had Plaintiffs or their family known what Defendant Archdiocese knew - that Lawrence Peguero was a suspected child molester and a danger to children before Plaintiffs were first molested by Peguero, Plaintiffs would not have been sexually molested.

21. Plaintiffs did not discover that they had been defrauded or have any reason to believe that Defendant Archdiocese had defrauded them until recently.

22. As a direct and proximate result of Defendant Archdiocese's misrepresentations, fraud and misconduct, Plaintiffs have suffered and continue to suffer great pain of mind and body, shock, emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation and loss of enjoyment of life and were prevented and will continue to be prevented from performing their normal daily activities and obtaining the full enjoyment of life, have sustained loss of earning capacity and have incurred and will continue to incur expenses for medical and/or psychological treatment, therapy and counseling. The amount of Plaintiffs' damages will be fully ascertained at trial.

23. Defendant Archdiocese intentionally or recklessly disregard Plaintiffs' rights and safety such that punitive damages should be awarded against Defendant Archdiocese.

24. Plaintiffs affirmatively plead that due to Defendant's fraudulent concealment, Plaintiffs were unable to discover and could not have discovered through the exercise of reasonable diligence the Defendant's actionable conduct.

E. FRAUD

25. Defendant Archdiocese affirmatively represented to Plaintiffs and their family that Lawrence

Peguero did not have a history of molesting children, that Defendant Archdiocese did not know or suspect that Lawrence Peguero had a history of molesting children and that Defendant Archdiocese did not know that Lawrence Peguero was a danger to children.

26. Lawrence Peguero did have a history of sexually molesting children. Defendant Archdiocese knew that Lawrence Peguero had a history of sexually molesting children and that he was a danger to children.

27. Plaintiffs justifiably relied upon Defendant Archdiocese's misrepresentations which caused them to be sexually molested by Lawrence Peguero and suffer the other damages described herein.

28. Defendant Archdiocese knew that its misrepresentations were false or at least were reckless without care of whether these representations were true or false.

29. Defendant Archdiocese made the misrepresentation with the intent to deceive Plaintiffs and to induce them to act on the misrepresentations to their detriment.

F. FRAUD (INTENTIONAL NON-DISCLOSURE)

30. Defendant Archdiocese knew that Lawrence Peguero had a history of sexually molesting children before Peguero sexually molested Plaintiffs.

31. Whether or not Peguero had a history of sexual abuse was a material fact to Plaintiffs.

32. Plaintiffs relied upon this non-disclosure.

33. Defendant Archdiocese intentionally did not disclose this fact to the then minor Plaintiffs in order to induce them to act on the misrepresentations to their detriment.

34. Plaintiffs relied upon this intentional non-disclosure, which caused them to be sexually molested by Lawrence Peguero and suffer the other damages to his detriment.

G. FRAUD (NEGLIGENT MISREPRESENTATION)

35. Defendant Archdiocese, through its agents misrepresented to Plaintiffs and their family that

Peguero did not have a history of molesting children and that Peguero was not a danger to children.

36. Peguero did have a history of sexually molesting children and was a danger to children.

37. Defendant Archdiocese owed a duty of care to Plaintiffs because it should have known that Peguero would have access to children, including Plaintiffs, should have known that Peguero was a danger to children, and should have known that Peguero had molested children before he molested Plaintiffs, and should have known that parents and children would place the utmost trust in Peguero.

38. Defendant Archdiocese, through its agents, in acts separate from and before its representation, failed to use ordinary care in making the representation or in ascertaining the facts related to Peguero. Defendant Archdiocese reasonably should have foreseen that its representation would subject Plaintiff to the unreasonable risk of harm.

39. Defendant Archdiocese failed to use ordinary care to determine Peguero's history of molesting children and whether he was safe for work with children before it made its representation about Peguero. The Defendant Archdiocese's failures include but are not limited to: failure to ask Peguero whether he sexually molested children, failure to ask Peguero's co-workers whether he molested children or whether they had any concerns about Peguero and children, failure to investigate Peguero's interest in children, failure to have a sufficient system to determine whether Peguero molested children and whether he was safe, failure to train its employees properly to identify signs of child molestation by fellow employees, and failure to investigate warning signs about Peguero when they did arise.

40. Plaintiffs believed and justifiably relied upon Defendant Archdiocese's representations which caused them to be sexually molested by Peguero and suffer the other damages described herein.

H. PLAINTIFFS' DAMAGES

41. As a direct and proximate result of the conduct of Defendant described above, Plaintiffs have

suffered losses and damages in a sum within the jurisdictional limits of the court, for which they sue in this petition. Specifically, throughout the periods of molestation, Plaintiffs were frightened, humiliated, embarrassed, confused, distraught and suffered mental anguish, emotional distress and psychological injury that interferes with their abilities to carry out the day-to-day responsibilities of life, their enjoyment of life and the proper psychological and emotional development of adolescent girls and boys. Therefore, Plaintiff herein claim the following items of specific damages:

1. Reasonable and necessary medical expenses incurred in the past;
2. Reasonable and necessary medical expenses reasonably likely to be incurred in the future;
3. Past physical pain and suffering in the past and future;
4. Mental anguish and impairment in the past;
5. Mental anguish and impairment in the future;
6. Pre-judgment interest at the highest rate allowed by law; and
7. Post-judgment interest at the highest rate allowed by law.

42. Many elements of damage, including reasonable and necessary medical expenses in the past and future, pain and suffering in the past and future, mental anguish in the past and future, past and future physical impairment cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damages is peculiarly within the province of the jury. Plaintiffs do not at this time seek any certain amount of damages for any of these particular elements of damage, but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate them. However, and only because the Defendant has demanded to know the maximum amount that the Plaintiffs could be entitled to, at this time Plaintiffs specifically plead that they do not believe that their damages would exceed \$2,750,000.00.

However, Plaintiffs reserve the right to file either a trial amendment or an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low.

I. EXEMPLARY DAMAGES

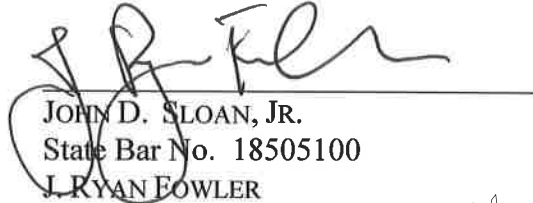
43. Pursuant to Texas Civil Practice Code 41.003, Plaintiffs seek recovery of exemplary damages against Defendant based Defendant's fraud. Plaintiffs hereby seek exemplary damages against Defendant.

J. PRAYER

44. As a result of the facts stated herein and alleged above, Plaintiffs have been made to suffer and sustain, at the hand of Defendant, general and special damages in an amount far in excess of the minimum jurisdictional requirements of this Court and in such amount as the evidence may show proper at the time of trial. Upon a trial of the merits of the above action, based upon the common law and statutory remedies set forth in this petition and other to be proved at the time of trial, Plaintiffs show they are entitled to compensation for the injuries suffered at the hands of the Defendant.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be cited to appear and answer herein, as the law directs and that upon final hearing thereof, Plaintiffs have and recover judgment from Defendant pursuant to the above and foregoing allegations in such amounts as the evidence may show proper at the time of trial, together with pre-judgment and post-judgment interest thereon at the maximum legal rate allowed by law, cost of Court, and for such other and further relief, both general and special, at law or in equity, to which Plaintiffs may show themselves justly entitled. Plaintiffs specifically pray for exemplary damages against Defendant.

Respectfully submitted,
SLOAN, BAGLEY, HATCHER & PERRY LAW FIRM



JOHN D. SLOAN, JR.
State Bar No. 18505100
J. RYAN FOWLER

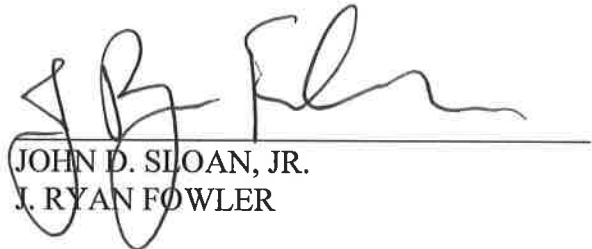
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served on the following pursuant to the Texas Rules of Civil Procedure this 2 day of November, 2010:

Mr. Robert Schick
Ms. Jennifer H. Davidow
Vinson & Elkins LLP
First City Tower
1001 Fannin Suite 2500
Houston, TX 77002



JOHN D. SLOAN, JR.
J. RYAN FOWLER

No. 2010-40506

MONICA BAEZ, ELODIA FLORES, MARY §
ANN GASPIN, RAYMOND DEANDA, and §
ALFRED DEANDA §
Plaintiffs §

IN THE DISTRICT COURT OF

V.

THE ROMAN CATHOLIC ARCHDIOCESE
OF GALVESTON-HOUSTON,
Defendant.

HARRIS COUNTY, TEXAS

215th JUDICIAL DISTRICT

No. 2010-74037

GUADALUPE GONZALES,
Plaintiff,

IN THE DISTRICT COURT OF

V.

THE ROMAN CATHOLIC ARCHDIOCESE
OF GALVESTON-HOUSTON,
Defendant.

HARRIS COUNTY, TEXAS

281st JUDICIAL DISTRICT

Declaration of Daniel Nicholas DiNardo

My name is Daniel Nicholas DiNardo. I was born on [REDACTED] 1949. My business address is care of the Archdiocese of Galveston-Houston, 1700 San Jacinto, Houston, Texas, 77002, USA. I declare under penalty of perjury that the foregoing is true and correct.

1. I first became associated with the Archdiocese in Galveston-Houston (**the Archdiocese**) on March 26, 2004. Before that time, I was Bishop of Sioux City, Iowa. I was not associated with the Archdiocese before March 26, 2004.

2. From March 26, 2004 to December 28, 2004, I was Coadjutor Bishop of Galveston-Houston. The Diocese of Galveston-Houston was elevated to an Archdiocese on December 29, 2004. On that date, I became Coadjutor Archbishop of Galveston-Houston. On February 28, 2006, I became the sole Archbishop of Galveston-Houston. An Archbishop is the leader of an Archdiocese.

3. I am also a Cardinal. A Cardinal is a senior ecclesiastical official of the Catholic Church. The Cardinals of the world are collectively called the College of Cardinals. One duty of the College of Cardinals is to elect a new Pope when the Papal seat is vacated. I became a Cardinal on November 24, 2007.

4. I never met Father Lawrence Peguero. I am informed he died in 2000, before I came to the Archdiocese. I have no personal knowledge of Fr. Peguero's conduct.

5. On November 21, 2007, the Archdiocese received by fax a letter from John D. Sloan, Jr., a lawyer, about the claims of Monica Baez, Elodia Flores, and Mary Ann Gaspin of abuse by Fr. Peguero. That was the first time I learned of their allegations about Fr. Peguero.

6. On my behalf, John Sieger, the Archdiocese's general counsel at that time, wrote back to Mr. Sloan and told him of my desire to meet in person with his clients so that I could express my apologies for any pain and distress they had endured.

7. On March 14, 2008, around 4:00pm, I met with Mr. Sloan, Mrs. Baez, Mrs. Flores, Mrs. Gaspin, and their brother, Raymond Deanda, in the Archdiocese's offices. John Sieger was also in the meeting. That was the only time I met those individuals. I have never met Alfred Deanda. At the meeting, Mr. Sloan and his clients told Mr. Sieger and me about certain acts and statements they allege were committed or made by Fr. Peguero. However, I have no personal knowledge of those alleged acts or statements or of anything the Archdiocese did or did not do in connection with them.

8. I have never spoken with or met Guadalupe Gonzales.

Executed in Harris County, State of Texas, on the 9th day of November, 2011.

Daniel Nicholas DiNardo
Daniel Nicholas DiNardo

V.

215th JUDICIAL DISTRICT

The doctrine of fraudulent concealment, which acts as an exception to the statute of limitations, does not apply. Each plaintiff knew he or she had been abused. That knowledge put each plaintiff on notice to investigate any claim he or she might have against the Archdiocese.

Archdiocese's Use of Unfiled Discovery

The Archdiocese provides notice under Texas Rule of Civil Procedure 166a(d) that it intends to use the following previously unfiled discovery to support its motion.

Exhibit 1	August 30, 2010	Affidavit of John Sieger and exhibit Exhibit A: Redacted letter from John Sloan (Nov. 21, 2007)
Exhibit 2	July 21, 2011	Monica Baez deposition
Exhibit 3	January 7, 2011	Monica Baez interrogatory answers (excerpts)
Exhibit 4	June 9, 2011	Elodia Flores deposition
Exhibit 5	January 7, 2011	Elodia Flores interrogatory answers (excerpts)
Exhibit 6	June 8, 2011	Mary Ann Stroud deposition
Exhibit 7	January 7, 2011	Mary Ann Gaspin interrogatory answers (excerpts)
Exhibit 8	June 9, 2011	Raymond Deanda deposition
Exhibit 9	January 7, 2011	Raymond Deanda interrogatory answers (excerpts)
Exhibit 10	June 10, 2011	Alfred Deanda deposition
Exhibit 11	January 7, 2011	Alfred Deanda interrogatory answers (excerpts)

Facts

The plaintiffs allege they were sexually abused by a priest during the 1960s and 1970s. On November 21, 2007, almost three years before the plaintiffs filed suit, counsel for the plaintiffs wrote a letter to the Archdiocese regarding the claims of plaintiffs Baez, Flores, and Gaspin. Ex. 1 at ex. A.¹ However, the plaintiffs did not sue the Archdiocese until June 30, 2010.

In his or her deposition and/or interrogatory answers, each plaintiff testified as to his or her knowledge that he or she was abused as a minor by Fr. Peguero. No plaintiff alleges he or she was abused after age eighteen.

A. Monica Baez

Date of birth	[REDACTED]	1965 (Ex. 3 at 3 (interrogatory 1))
18th birthday	[REDACTED]	1983
23rd birthday	[REDACTED]	1988

Ms. Baez testified Fr. Peguero abused her when she was five or six years old. Ex. 2 at 51. She said he also made inappropriate comments to her during confession, though she did not say how old she was at the time. *Id.* at 46.

B. Elodia Flores

Date of birth	[REDACTED]	1958 (Ex. 5 at 3 (interrogatory 1))
18th birthday	[REDACTED]	1976
23rd birthday	[REDACTED]	1981

Mrs. Flores testified Fr. Peguero's first instance of abuse occurred when she was approximately five years old, and the last occurred when she was approximately eleven years old. Ex. 4 at 50; *see* Ex. 5 at 5 (interrogatory 6) (she was five years old at time of abuse).

C. Mary Ann Gaspin (now Stroud)

Date of birth	[REDACTED]	1961 (Ex. 7 at 3 (interrogatory 1))
18th birthday	[REDACTED]	1979
23rd birthday	[REDACTED]	1984

Mrs. Stroud was not certain as to the dates of the alleged abuse. She testified the first instance of abuse occurred just before she began school, and the last occurred "a couple of years" later. Ex. 6 at 42-43, 68-69.

D. Raymond Deanda

Date of birth	[REDACTED]	1949 (Ex. 9 at 3 (interrogatory 1))
18th birthday	[REDACTED]	1957
23rd birthday	[REDACTED]	1972

Mr. Raymond Deanda testified that the events at issue in his claim occurred when he was in elementary school. Ex. 8 at 23, 26-27.

¹ The letter has been redacted to remove information not relevant to this motion. The Archdiocese will provide an unredacted version to the Court in camera if the Court so desires.

E. Alfred Deanda

Date of birth	[REDACTED]	1951 (Ex. 11 at 3 (interrogatory 1))
18th birthday	[REDACTED]	1969
23rd birthday	[REDACTED]	1974

Mr. Alfred Deanda testified that the events about which he complains occurred over two summers beginning when he was approximately seven years old. Ex. 10 at 23-24, 27-28.

Argument

I. Standards for summary judgment

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 846 (Tex. 2005). In deciding if summary judgment is proper, the court must take as true all competent evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id.*

The *Rubio* court explained the burdens of proof when the defendant moves for summary judgment based on limitations:

A defendant moving for summary judgment on the affirmative defense of limitations has the burden to conclusively establish that defense, including the accrual date of the cause of action. If the movant establishes that the statute of limitations bars the action, the nonmovant must then adduce summary judgment proof raising a fact issue in avoidance of the statute of limitations.

Id. (internal citations omitted).

II. The plaintiffs' claims are barred by the statute of limitations.

A. Law on limitations

A cause of action accrues when a wrongful act causes some legal injury, even if the injury is not discovered until later, and even if all resulting damage has not yet occurred. [S.V. v. R.V.](#), 933 S.W.2d 1, 4 (Tex. 1996). The time within which the plaintiff has to bring an action based on the injury generally runs from the time of accrual. See [TEX. CIV. PRAC. & REM. CODE](#)

[§ 16.003](#) (two-year limitations period for personal injury runs from day cause of action accrues). The date of accrual is a question of law. [Moreno v. Sterling Drug, Inc.](#), 787 S.W.2d 348, 351 (Tex. 1990) (internal citations omitted). Each plaintiff's cause of action accrued when he or she was allegedly first abused, sometime during his or her childhood.

However, the limitations period for a cause of action based on injury to a minor is tolled until the minor turns eighteen. [TEX. CIV. PRAC. & REM. CODE § 16.003\(a\)\(1\), \(b\)](#). That is because minority is a "legal disability" for purposes of the statute of limitations, and limitations periods are suspended (tolled) during periods of legal disability. The limitations period for the each plaintiff's claims began to run on his or her 18th birthday.

B. Limitations period ended on each plaintiff's 23rd birthday at the latest.

The plaintiffs' live petition (the fourth amended) labels their causes of action as "fraud," "fraud (intentional non-disclosure)," and "fraud (negligent misrepresentation)." Pls. 4th Am. Pet. at 4-6 ¶¶ 25-40. Today, fraud is governed by a four-year statute of limitations.² [TEX. CIV. PRAC. & REM. CODE § 16.003\(a\)](#).

Though they characterize their cause of action as one for fraud, the plaintiffs seek damages for personal injuries arising from the abuse, as opposed to some later alleged fraud by the Archdiocese. *Id.* at 6-8 ¶¶ 41-42. They allege that "**throughout the periods of molestation,**" they were "frightened, humiliated, embarrassed, confused, distraught and suffered mental anguish, emotional distress and psychological injury" *Id.* at 7 ¶ 41 (boldface added). The plaintiffs seek to recover damages for past and future medical expenses, past and future physical pain and suffering, and past and future mental anguish and impairment. *Id.* The true

² Statutes of limitations are not retroactive. A cause of action is governed by the statute of limitations in effect at the time of accrual, not at the time the plaintiff brought suit. See [Baker Hughes, Inc. v. Keco R. & D., Inc.](#), 12 S.W.3d 1, 4 (Tex. 1999). For purposes of this motion only, the Archdiocese assumes the limitations periods in effect at the time the plaintiff's causes of action accrued are the same as the limitations periods in effect today.

cause of action for which the plaintiffs seek relief is one arising from personal injuries, which is governed by a two-year limitations period. [TEX. CIV. PRAC. & REM. CODE § 16.003\(a\)](#).

Unlike other personal injury claims, a cause of action arising from a sexual assault may be brought within five years of accrual.³ [TEX. CIV. PRAC. & REM. CODE § 16.0045\(a\)\(1\)](#). Section 16.0045 was not enacted until 1995. Act of June 15, 1995, 74th Leg., R.S., ch. 739, § 1, 1995 Tex. Gen. Laws 3850. Before that time, claims arising from sexual assault were subject to the standard two-year limitations period for personal injury claims. *See S.V.*, 933 S.W.2d at 3 (applying two-year limitations period for cause of action based on sexual assault).

The Court need not decide which limitations period (two, four, or five years) governs, however, because the plaintiffs filed suit well after the expiration of all three periods.

C. The plaintiffs' claims are time-barred.

Each plaintiff's cause of action accrued at the first instance of alleged abuse. *S.V.*, 933 S.W.2d at 4. The statute of limitations was tolled until the plaintiff's 18th birthday, at which time the limitations period began again. The deadline for each plaintiff to sue was, at the latest, his or her 23rd birthday, which was well before they filed this lawsuit. *See* pp. 3-4. Each plaintiff's claim is therefore barred by the statute of limitations.

³ The Texas Supreme Court has not decided whether claims that arise from a sexual assault but are asserted against someone other than the alleged perpetrator (for example, a claim against the perpetrator's employer based on vicarious liability) are governed by the five-year limitations period of [section 16.0045\(a\)\(1\)](#) or the general two-year limitations period of [section 16.003\(a\)](#). Jurisdictions around the country are split on how to construe statutes like [section 16.0045\(a\)](#). Compare *Sandoval v. Archdiocese of Denver*, 8 P.3d 598, 602 (Colo. Ct. App. 2000) (limitations period for claims arising from sexual assault applies only to claims against assailant, not claims against third parties) with *Nutt v. Norwich Roman Catholic Diocese*, 921 F. Supp. 66, 72 (D. Conn. 1995) (limitations period for claims arising from sexual assault applies to claims against any defendant, not just assailant). The Archdiocese submits [section 16.0045\(a\)](#) does not apply to the plaintiff's claims stemming from the Archdiocese's own alleged acts.

III. The doctrine of fraudulent concealment does not apply.

The doctrine of fraudulent concealment acts as an exception to the statute of limitations.⁴ It does not apply in this case because all the plaintiffs knew they were abused. That knowledge put them on notice to investigate any claim they might have against the Archdiocese.

A. Legal standards

The doctrine of fraudulent concealment may defer accrual of a cause of action when the defendant owes the plaintiff a duty to disclose the wrong (i.e. the facts giving rise to the cause of action) but instead, with actual knowledge of the wrong, intends to and does conceal the wrong from the plaintiff. See [*Earle v. Ratliff*](#), 998 S.W.2d 882, 888 (Tex. 1999); [*Borderlon v. Peck*](#), 661 S.W.2d 907, 908 (Tex. 1983). The doctrine defers accrual until the plaintiff discovers or reasonably should have discovered the deceitful conduct or facts giving rise to the cause of action. [*Earle*](#), 998 S.W.2d at 888.

The plaintiff carries the burden to show that the defendant: (1) had actual knowledge that a wrong occurred; (2) had a duty to disclose the wrong; and (3) had a fixed motive to conceal the wrong. [*Mellon Serv. Co. v. Touche Ross & Co.*](#), 17 S.W.3d 432, 436 (Tex. App.—Houston [1st Dist.] 2000, no pet.). But the doctrine does not apply if the plaintiff “learn[ed] of facts, conditions, or circumstances which would cause a reasonably prudent person to make inquiry, which, if pursued, would lead to discovery of the concealed cause of action.” [*Borderlon*](#), 661 S.W.2d at 909. Nor does the doctrine apply if the plaintiff **could** have discovered such facts, conditions, or circumstances through the exercise of reasonable diligence. [*Kerlin v. Saucedo*](#), 263 S.W.3d 920, 925 (Tex. 2008).

⁴ The plaintiffs have not pleaded and do not suggest any other exception to the statute of limitations (e.g. the discovery rule) applies to this case. Therefore, this motion will address only fraudulent concealment.

The relevant knowledge for purposes of the fraudulent concealment doctrine in a sexual abuse case is knowledge of the abuse. [S.V.](#), 933 S.W.2d at 8. If the plaintiff knows he was abused, the doctrine cannot apply. “[The plaintiff] does not allege fraud or fraudulent concealment, nor could she. [She] was not deceived into thinking that she was not being abused when she was.” [Id.](#)

Knowledge of the abuse also puts the plaintiff on notice (described as “inquiry notice”) to investigate whether she might have a claim against the abuser’s supervising entity (e.g. a teacher’s school, a priest’s diocese). [Doe v. Linam](#), 225 F. Supp. 2d 731, 736 (S.D. Tex. 2002) (Doe’s knowledge of his abuse “could have reasonably led him to discover his allegedly concealed causes of action, if he had only made a simple inquiry into his rights”); [Marshall v. First Baptist Church](#), 949 S.W.2d 504, 507-08 (Tex. App.—Houston [14th Dist.] 1997, no writ); [Doe v. St. Stephen’s Episcopal Sch.](#), No. 09-41108, 2010 WL 2545409, *3 (5th Cir. June 18, 2010) (per curiam) (not designated for publication) (all holding fraudulent concealment did not apply to claim against church because plaintiffs knew of alleged abuse).⁵

B. The doctrine does not apply because the plaintiffs knew they were abused.

Without elaboration, the plaintiffs plead that “due to Defendant’s fraudulent concealment, Plaintiffs were unable to discover and could not have discovered through the exercise of reasonable diligence the Defendant’s actionable conduct.” Pl. 4th Am. Pet. at 4 ¶ 24. That allegation is belied by their deposition testimony and interrogatory answers. Each plaintiff

⁵ See also [Colosimo v. Roman Catholic Bishop of Salt Lake City](#), 156 P.3d 806 (Utah 2007) (plaintiff’s knowledge of abuse, abuser’s status of as priest, and relationship between abuser and diocese was sufficient notice, as a matter of law, to investigate fraud claim against bishop); [Doe v. Roman Catholic Diocese of Jackson](#), 947 So. 2d 983, 987 (Miss. 2006) (fraudulent concealment did not apply because Doe was aware of abuse); [Aquilino v. Philadelphia Catholic Archdiocese](#), 884 A.2d 1269, 1279 (Super. Penn. 2005) (fraudulent concealment did not apply where plaintiff, whose abuser was transferred to Perú, never questioned archdiocese about abuser and archdiocese never responded by misleading him).

knew that he or she was abused. That knowledge put them on notice to investigate any claim they might have against the Archdiocese.

1. Monica Baez

Ms. Baez's "clearest memories" of the alleged abuse by Fr. Peguero are of "seeing him right by our mailbox walking towards our door. We had a window on our front door and there was a curtain there and he would just show up." Ex. 2 at 42. She testified "it was a relief" when Fr. Peguero died in 2000, because she "knew that what he had done couldn't happen again." *Id.* at 63. Between 2003 and 2005, she considered having a ceremony in the Catholic church for her second marriage (the wedding for which had taken place in a civil court in 1997), but decided not to because she "had some memories come back regarding sexual abuse by the priest." *Id.* at 29-30. Ms. Baez became ill at her daughter's first communion, around 2004, because she was thinking about Fr. Peguero's alleged abuse. *Id.* at 55-56. Soon after, Ms. Baez contacted the Diocese of Fort Worth about Fr. Peguero's alleged abuse. The Diocese of Fort Worth referred her to the Archdiocese. *Id.* at 58-59; *see also* Ex. 3 at 7 (interrogatory 12). Finally, Ms. Baez indicated on a form she filled out in 2005 that she was sexually abused by a priest, who she confirmed was Fr. Peguero. Ex. 2 at 69-72.

2. Elodia Flores

Mrs. Flores testified she began attending a different church—where Fr. Peguero was not the pastor—in 1973 or 1974 because she "needed to get away from him." Ex. 4 at 41. She remembers talking with her sister Mary Ann sometime in or before 1986 about the alleged abuse. *Id.* at 54-55. She testified "everything came back" to her about the alleged abuse when she was 35 years old, which was in 1993, and confirmed she was referring to the alleged abuse by Fr. Peguero. *Id.* at 44. Finally, she and several of her siblings (including plaintiffs Monica Baez,

Mary Ann Gaspin, and Raymond Deanda) discussed the alleged abuse at their mother's funeral in 2006. *Id.* at 57-58.

3. Mary Ann Gaspin (now Stroud)

Mrs. Stroud testified about statements Fr. Peguero allegedly made while she was in the confessional with him. She said the confessional was arranged so that she could see his face, not just his silhouette. Ex. 6 at 34-35. She also testified that her family switched parishes at some point in her childhood and attended St. Gregory's, where Fr. Peguero was by then the pastor. She said she did not want to go to church because she was "too afraid to go" due to her experience with Fr. Peguero. *Id.* at 28-30. Sometime before she moved to Savannah, Georgia, in 1986, Mrs. Stroud spoke with her sister Elodia about the alleged abuse. *Id.* at 44-45; Ex. 4 at 54-56. Mrs. Stroud attended counseling in 1986 for depression and suicidal ideations stemming from past sexual abuse by several people, the first of whom was Fr. Peguero. Ex. 6 at 23. She spoke with her sister Monica about the alleged abuse sometime after 1986 and before her first marriage ended in divorce several years later. *Id.* at 47. She also told her first husband about the alleged abuse by Fr. Peguero. *Id.* at 46. Finally, although Mrs. Stroud did not recall that she was sexually abused by family members until 1998, she remembered the alleged abuse by Fr. Peguero. *Id.* at 101-02.

4. Raymond Deanda

Mr. Deanda told his parents about Fr. Peguero's alleged abuse, though he does not recall when. Ex. 8 at 21-22. He did speak about the alleged abuse with his siblings at his mother's funeral in 2006. *Id.* at 21-22. He did not talk about the alleged abuse until that time because he "didn't want to," but he remembered what happened. *Id.* at 28-29.

5. Alfred Deanda

When he was seven years old, Mr. Deanda told both his parents about the alleged abuse and inappropriate conduct by Fr. Peguero. *Id.* at 24, 29-30. He stopped attending church when he was sixteen “because of what was going on with Father Peguero,” and because he did not want to be around Fr. Peguero. *Id.* at 20, 31. On the afternoon of his mother’s funeral in 2006, Alfred told his brother Raymond about Fr. Peguero’s alleged abuse. *Id.* at 33.

The plaintiffs’ knowledge of the abuse put them on notice to investigate other potential claims they might have asserted before the limitations period expired. Due to that knowledge, the doctrine of fraudulent concealment does not apply.

Conclusion

The Archdiocese respectfully requests that the Court grant its motion for summary judgment. The Archdiocese also requests all other relief to which it may be entitled.

Dated: January 9, 2012

Respectfully submitted,

VINSON & ELKINS LLP

/s/ Robert M. Schick

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Certificate of Service

I certify that a true and correct copy of *Archdiocese's Amended Motion for Summary Judgment* was served on the following counsel of record by electronic service on January 9, 2012:

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(s) Jennifer H. Davidow

Jennifer H. Davidow

Unofficial Copy Office of Marilyn Burgess District Clerk

CAUSE NO. 2010-40506

**MONICA BAEZ, ELODIA FLORES,
MARY ANN GASPIN, RAYMOND
DEANDA, and ALFRED DEANDA**

v.

**THE ROMAN CATHOLIC
ARCHDIOCESE OF GALVESTON-
HOUSTON**

§ **IN THE DISTRICT COURT**
§
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§ **HARRIS COUNTY, TEXAS**
§
§
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§ **215TH JUDICIAL DISTRICT**

ELODIA FLORES' OBJECTIONS AND ANSWERS
TO ARCHDIOCESE'S INTERROGATORIES

TO: Defendant, THE ROMAN CATHOLIC ARCHDIOCESE OF GALVESTON-HOUSTON, by and through its attorney of record, Robert M. Schick, Jennifer H. Davidow, Taylor R. Pullins, Vinson & Elkins LLP, First City Tower, 1001 Fannin, Suite 2500, Houston, Texas 77002.

COMES NOW Plaintiff, ELODIA FLORES, and provides the following Answers to Archdiocese's Interrogatories.

GENERAL RESPONSE

As a general response to all of the requests below, the following materials are incorporated by reference into each and every response below as though fully set forth therein:

1. All depositions taken or to be taken in this case, together with all exhibits and attachments thereto. This includes both oral depositions and depositions on written questions;
2. All affidavits (business record and billing record) filed with the Court by any party, together with all exhibits and attachments thereto;
3. All documents (including photographs, videotapes and graphic material) produced by Plaintiffs to any Defendant in this case;
4. All other request responses filed by Plaintiffs in this cause, regardless of the party who served the requests;
5. All medical illustrations produced by Plaintiffs in this case;

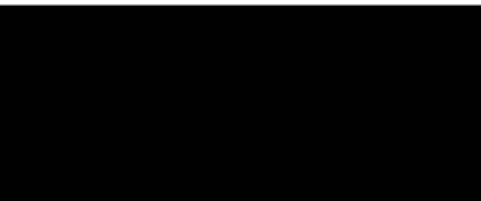
OBJECTIONS AND ANSWERS TO INTERROGATORIES

1. Please state your full name, date of birth, social security, current address, and any other names by which you have been identified.

ANSWER:

Plaintiff objects to this Interrogatory seeking her social security number as overly broad in that it seeks information not reasonably calculated to lead to the discovery of admissible evidence, is harassing and unduly burdensome, and is impermissible "fishing expedition" in violation of the holding of *K-Mart v. Sanderson*, 937 S.W. 2d 429 (Tex. 1996). Plaintiff makes no claim for lost wages. Plaintiff further objects to this Interrogatory on the basis of her privacy interest. Subject to and without waiving the foregoing objections:

Elodia Deanda Flores



2. State the name, address and telephone number of each health care provider, psychiatrist, psychologist, social worker, counselor, drug or alcohol abuse counselor, medical doctor or other health care professional (including any hospital, institution, clinic, drug or alcohol treatment center or other facility) who has examined, treated or performed an evaluation of you from the time of the abuse you allege in your Petition to the present. Please provide the approximate beginning and ending dates of such services and a brief description of the type of service rendered.

ANSWER:

Plaintiff objects to this Interrogatory as being over broad, global, vague and harassing. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996); *National Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993). What Defendant is seeking is a fishing expedition that is not allowed under the Tex. R. Civ. P. 196.1. *Dillard Dept. Stores, Inc. v. Hall*, 909 S.W. 2d 491, 492 (Tex. 1995); *In re Alford Chevrolet-Geo*, 977 S.W. 2d 173, 181 (Tex. 1999). Subject to and without waiving the foregoing, Plaintiff received counseling from C [REDACTED]

3. State all times you have been engaged or married, giving the name address and telephone number of the person(s) to whom you were engaged or married.

ANSWER:

Plaintiff objects that this Interrogatory seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Rule 192.3(a); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990). Subject to and without waiving the foregoing,

Plaintiff has been married to Porfirio Flores since December 21, 1974.

4. State all addresses where you have ever resided from the time of the abuse you allege in your Petition to the present, giving the beginning and ending dates of such residences, and identifying all other persons living at each residence with you (including parents, siblings or other persons).

ANSWER:

Plaintiff objects that this Interrogatory seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Rule 192.3(a); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990). Subject to and without waiving the foregoing, Plaintiff states:

[REDACTED]
Houston, Texas

[REDACTED]
Houston, Texas

[REDACTED]
Ledbetter, Texas

5. Identify all schools, state facilities, or other similar facilities that you have ever attended (including educational, technical, or occupational training programs), whether or not completed, giving the full name and address of the facility and beginning and ending dates of your attendance.

ANSWER:

Plaintiff objects that this Interrogatory seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Rule 192.3(a); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990). Subject to and without waiving the foregoing, Plaintiff states: Orange Grove Elementary School, Johnson Elementary School, and Hambrick Jr. High School.

6. For each instance of abuse that you contend Peguero committed upon you in this case, please state the following:
- (a) the date and approximate time of the alleged abuse;
 - (b) the name, address and telephone number of all witnesses to the alleged abuse;
 - (c) a description of the abuse; and
 - (d) the location where the alleged abuse occurred.

ANSWER:

Plaintiff is unable to remember the exact dates and times of the abuse he suffered at the hands of Peguero but recalls that it was often at Plaintiff's own home. Peguero would visit her home and hear confession in the kitchen. Peguero would turn the lights off in the kitchen and the children would go in one at a time. Plaintiff was always the last one though she was only 5 years old at the time and too young for confession. Peguero would hold her tightly in his arms and rub his face against her face. Peguero told her that all little girls did just what he said. He would sit her on his lap and move her up and down telling her to ride the horse. He would tell her to touch his penis to see how hard it was. At times Peguero made Plaintiff stand in front of him and he would then raise her dress and touch her body. He would squeeze her breast and put his finger in her vagina. He would make her hold his penis until he ejaculated. Peguero kept a towel around his neck and would use it to clean himself and Plaintiff after ejaculating. At times Peguero would make Plaintiff perform oral sex. As Plaintiff grew older she would attend confession at the church prior to mass. Peguero would make her say that she touched herself all over or he would not let her have penance. At times in the confessional, Peguero would masturbate while he made her confess to fondling herself.

7. Please identify by title, case number, court and state, all lawsuits, including but not limited to actions for personal injury, workers' compensation, custody, divorce, debt or personal in which you have been a party, whether as plaintiff, defendant or other party.

ANSWER:

Plaintiff objects that this Interrogatory seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Rule 192.3(a); *Axelsson, Inc. v. McIlhenny*, 798 S.W.2d 550, 553 (Tex. 1990). Plaintiff further objects to this request because the information is equally available to both parties. When an interrogatory asks for information that is available from public records, from the business records of the responding party, or from a compilation, abstract or summary of the responding party's business records, the responding party is not obligated to give a narrative answer to the interrogatory. Tex. R. Civ. P. 197.2(c).

8. Identify any and all crimes for which you have been arrested or with which you have been charged.

ANSWER:

Plaintiff objects that this Interrogatory seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Rule 192.3(a); *Axelsson, Inc. v. McIlhenny*, 798 S.W.2d 550, 553 (Tex. 1990). Plaintiff further objects to this Interrogatory because it is overly broad, is not limited in time or scope, and is a fishing expedition in violation of *KMart Corp. v. Sanderson*, 937 SW2d 429 (Tex. 1996).

16. State with a reasonable degree of specificity the nature of all injuries and/or damages that you claim to have sustained because of the incident made the basis of this suit, and itemize these injuries/damages.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial. Plaintiff further objects to this Interrogatory to the extent that he is asked to state his injuries, illnesses or other physical or mental conditions sustained as a result of the occurrence to the extent that it requires Plaintiff to express medical opinions. Subject to and without waiving the above objections, Plaintiff states in layman's terms the following:

As a result of the abuse suffered at the hands of Peguero, Plaintiff suffered extreme emotional and psychological consequences.

17. State your full employment history, including name, address and telephone numbers of each employer, the beginning and ending date of such employment, and the general type of employment.

ANSWER:

Plaintiff objects to this Interrogatory as being over broad, global, vague and harassing. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996); *National Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993). What Defendant is seeking is a fishing expedition that is not allowed under the Tex. R. Civ. P. 196.1. *Dillard Dept. Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995). Plaintiff further objects to this entire Interrogatory on the grounds that it has no temporal limitation. Therefore, the information sought is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the lack of temporal limitation makes any effort to answer it unduly burdensome and harassing. Subject to and without waiving these objections Plaintiff is currently not employed.

18. Identify with specificity each act or omission or representation of the Archdiocese that you contend constituted fraud, the date of such act or omission and how you came to know of each such act or omission.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

19. With regard to each of your intentional non-disclosure allegations, please state the following:

- (a) The identity of each and every person or entity you contend "intentionally did not disclose" information about Peguero's alleged "history of sexually molesting children."
- (b) Each act or omission you contend contributed to, or furthered the alleged intentional non-disclosure, the date of each such act, and how you became aware of each such act.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

20. With regard to each of your misrepresentation allegations, please state the following:

- (a) The identity of each and every person or entity you contend misrepresented to you or your family information about Peguero's alleged "history of sexually molesting children."
- (b) Each act or omission you contend contributed to, or furthered the alleged misrepresentation, the date of each such act, and how you became aware of each such act.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

21. Identify with reasonable specificity each act or omission of the Archdiocese that you contend constituted a failure to use ordinary care to determine Peguero's alleged history of molesting children, the date of such act or omission, and how you came to learn of such act or omission.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

22. Please state when and in what Parish you received the following:

- (a) First Communion
- (b) Confirmation

ANSWER:

Plaintiff does not remember the date of her First Communion at St. Gregory the Great or her Confirmation at Our Lady of St. John.

23. State the name and location of all churches (including all Catholic parishes) that you have ever attended. Please state the general dates of attendance for each.

CAUSE NO. 2010-40506

MONICA BAEZ, ELODIA FLORES,
MARY ANN GASPIN, RAYMOND
DEANDA, and ALFRED DEANDA

VS.

THE ROMAN CATHOLIC ARCHDIOCESE
OF GALVESTON-HOUSTON

§ IN THE DISTRICT COURT
§
§
§
§ OF HARRIS COUNTY, TEXAS
§
§
§ 215th JUDICIAL DISTRICT

VERIFICATION

STATE OF TEXAS §
COUNTY OF Lee §

BEFORE ME, the undersigned Notary Public, on this day personally appeared ELODIA FLORES, who, being by me duly sworn, on her oath depose and said that she a Plaintiff in the above-entitled and numbered cause; that she has read the foregoing Interrogatory answers; and that every statement contained therein is within her personal knowledge and is true and correct, except that information contained in answer to Interrogatories regarding experts, legal contentions, trial witnesses and persons with knowledge of relevant facts which answers are based on information provided by other persons.

Elodia Flores
ELODIA FLORES

SWORN TO AND SUBSCRIBED BEFORE ME on the 6th day of December 2010, to certify which witness my hand and official seal.



Melinda F. Krause
Notary Public, State of Texas

My commission expires 9-24-2012

CAUSE NO. 2010-40506

**MONICA BAEZ, ELODIA FLORES,
MARY ANN GASPIN, RAYMOND
DEANDA, and ALFRED DEANDA**

v.

**THE ROMAN CATHOLIC
ARCHDIOCESE OF GALVESTON-
HOUSTON**

§ **IN THE DISTRICT COURT**
§
§
§
§ **HARRIS COUNTY, TEXAS**
§
§
§
§ **215TH JUDICIAL DISTRICT**

**MONICA BAEZ'S OBJECTIONS AND ANSWERS
TO ARCHDIOCESE'S INTERROGATORIES**

TO: Defendant, THE ROMAN CATHOLIC ARCHDIOCESE OF GALVESTON-HOUSTON, by and through its attorney of record, Robert M. Schick, Jennifer H. Davidow, Taylor R. Pullins, Vinson & Elkins LLP, First City Tower, 1001 Fannin, Suite 2500, Houston, Texas 77002.

COMES NOW Plaintiff, MONICA BAEZ, and provides the following Answers to Archdiocese's Interrogatories.

GENERAL RESPONSE

As a general response to all of the requests below, the following materials are incorporated by reference into each and every response below as though fully set forth therein:

1. All depositions taken or to be taken in this case, together with all exhibits and attachments thereto. This includes both oral depositions and depositions on written questions;
2. All affidavits (business record and billing record) filed with the Court by any party, together with all exhibits and attachments thereto;
3. All documents (including photographs, videotapes and graphic material) produced by Plaintiffs to any Defendant in this case;
4. All other request responses filed by Plaintiffs in this cause, regardless of the party who served the requests;
5. All medical illustrations produced by Plaintiffs in this case;

OBJECTIONS AND ANSWERS TO INTERROGATORIES

1. Please state your full name, date of birth, social security, current address, and any other names by which you have been identified.

ANSWER:

Plaintiff objects to this Interrogatory seeking her social security number as overly broad in that it seeks information not reasonably calculated to lead to the discovery of admissible evidence, is harassing and unduly burdensome, and is impermissible "fishing expedition" in violation of the holding of *K-Mart v. Sanderson*, 937 S.W. 2d 429 (Tex. 1996). Plaintiff makes no claim for lost wages. Plaintiff further objects to this Interrogatory on the basis of her privacy interest. Subject to and without waiving the foregoing objections:

Monica Baez

[REDACTED]

2. State the name, address and telephone number of each health care provider, psychiatrist, psychologist, social worker, counselor, drug or alcohol abuse counselor, medical doctor or other health care professional (including any hospital, institution, clinic, drug or alcohol treatment center or other facility) who has examined, treated or performed an evaluation of you from the time of the abuse you allege in your Petition to the present. Please provide the approximate beginning and ending dates of such services and a brief description of the type of service rendered.

ANSWER:

Plaintiff objects to this Interrogatory as being over broad, global, vague and harassing. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996); *National Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993). What Defendant is seeking is a fishing expedition that is not allowed under the Tex. R. Civ. P. 196.1. *Dillard Dept. Stores, Inc. v. Hall*, 909 S.W. 2d 491, 492 (Tex. 1995); *In re Alford Chevrolet-Geo*, 977 S.W. 2d 173, 181 (Tex. 1999). Subject to and without waiving the foregoing, Plaintiff states:

[REDACTED]

Houston, Texas

[REDACTED]

San Antonio, Texas

[REDACTED]

[REDACTED]
Fort Worth, Texas

5. Identify all schools, state facilities, or other similar facilities that you have ever attended (including educational, technical, or occupational training programs), whether or not completed, giving the full name and address of the facility and beginning and ending dates of your attendance.

ANSWER:

Plaintiff objects that this Interrogatory seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Rule 192.3(a); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990). Subject to and without waiving the foregoing, Plaintiff states: Johnson Elementary School, Hambrick Middle School, MacArthur High School, The University of St. Thomas, The University of Texas at San Antonio, The University of Texas Health Science Center at San Antonio, and Tomball and Kingwood College (NHMCCD).

6. For each instance of abuse that you contend Peguero committed upon you in this case, please state the following:

- (a) the date and approximate time of the alleged abuse;
- (b) the name, address and telephone number of all witnesses to the alleged abuse;
- (c) a description of the abuse; and
- (d) the location where the alleged abuse occurred.

ANSWER:

Plaintiff is unable to remember the exact dates and times of the abuse he suffered at the hands of Peguero but recalls that it was often at Plaintiff's own home. Peguero would visit during the day on days that her father was at work. Peguero would ask her mother for a cup of coffee and some food and she would go to the kitchen to prepare it for him. When my mother was out of the room, he would hold her arms firmly and rub his face on hers. Peguero would talk to her mother through the curtain while he was touching her. He would sit on the couch with a towel over his lap and threaten to hurt her and her mother if she didn't stop fidgeting or if she screamed. He would then try to force his penis into Plaintiff's genital area. Plaintiff recalls times that he would cover her mouth and face making it difficult to breathe. In the confessional at church, Peguero would ask detailed questions as to whether Plaintiff ever masturbated or allowed others to touch her. Peguero attempted to get her to bring others into the confessional with her so that he could watch them touch each other.

7. Please identify by title, case number, court and state, all lawsuits, including but not limited to actions for personal injury, workers' compensation, custody, divorce, debt or personal in which you have been a party, whether as plaintiff, defendant or other party.

11. State all facts or events that you contend comprise notice to or knowledge of the Archdiocese that Peguero was a “child molester” or would behave in a dangerous or sexually inappropriate manner with a minor. Please state separately for each such even or occurrence, the following:

- (a) A brief description of the even/incident/occurrence you contend comprises notice.
- (b) If you contend the Archdiocese was put on such notice by a person(s) please identify that person(s) by name, address and telephone number. If you contend the Archdiocese was put on such notice by a means other than a person, please state with specificity the manner in which you contend notice was given.
- (c) The identity of the person(s) at the Archdiocese to whom you contend notice was given.
- (d) The date and approximate time you contend the Archdiocese received the notice.

ANSWER:

This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). An interrogatory that requests a party to state all legal and factual assertions is improper. Tex. R. Civ. P. 197, cmt. 2. Subject to and without waiving the above objections, Plaintiff states the following: Based on information and belief Plaintiff was made aware of Peguero’s previous abuse with other children.

12. Please identify all persons with whom you have ever discussed the events made the basis of this suit and the date(s) on which each discussion was had.

ANSWER:

Plaintiff does not remember all the conversations but has discussed the abuse he suffered at the hands of Peguero with family members, my attorneys, a representative of the Ft. Worth Archdiocese, and other abuse victims.

13. Provide the name and position of any agent, servant, employee or representative of the Archdiocese with whom you, or anyone acting on your behalf (including parents, friends or family) has had any communication concerning facts relevant to this lawsuit. Please provide the date, type and substance of these communications.

ANSWER:

Plaintiff objects on the grounds that this Interrogatory, on its face, seeks information protected by the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections, the information is already in Defendant’s possession as Plaintiff spoke to a woman at the Archdiocese but does not recall her name.

17. State your full employment history, including name, address and telephone numbers of each employer, the beginning and ending date of such employment, and the general type of employment.

ANSWER:

Plaintiff objects to this Interrogatory as being over broad, global, vague and harassing. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996); *National Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993). What Defendant is seeking is a fishing expedition that is not allowed under the Tex. R. Civ. P. 196.1. *Dillard Dept. Stores, Inc. v. Hall*, 909 S.W. 2d 491, 492 (Tex. 1995). Plaintiff further objects to this entire Interrogatory on the grounds that it has no temporal limitation. Therefore, the information sought is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the lack of temporal limitation makes any effort to answer it unduly burdensome and harassing. Subject to and without waiving these objections Plaintiff is currently not employed.

18. Identify with specificity each act or omission or representation of the Archdiocese that you contend constituted fraud, the date of such act or omission and how you came to know of each such act or omission.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

19. With regard to each of your intentional non-disclosure allegations, please state the following:
- (a) The identity of each and every person or entity you contend "intentionally did not disclose" information about Peguero's alleged "history of sexually molesting children."
 - (b) Each act or omission you contend contributed to, or furthered the alleged intentional non-disclosure, the date of each such act, and how you became aware of each such act.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

20. With regard to each of your misrepresentation allegations, please state the following:

- (a) The identity of each and every person or entity you contend misrepresented to you or your family information about Peguero's alleged "history of sexually molesting children."
- (b) Each act or omission you contend contributed to, or furthered the alleged misrepresentation, the date of each such act, and how you became aware of each such act.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

21. Identify with reasonable specificity each act or omission of the Archdiocese that you contend constituted a failure to use ordinary care to determine Peguero's alleged history of molesting children, the date of such act or omission, and how you came to learn of such act or omission.

ANSWER:

Plaintiff objects to this Interrogatory to the extent that this question calls for a narrative response requiring complete factual detail, and to the extent that this question seeks to narrow Plaintiff's responses without the benefit of specific questions during direct or cross examination. This question is unduly burdensome and over broad and would more

appropriately be addressed by way of deposition. Interrogatories are designed to elicit basic facts of the case. Tex. R. Civ. P. 192.3, 196.1; *Texas Dept. of Corrections v. Herring*, 513 S.W.2d 6 (Tex. 1974). It is not permissible to use interrogatories to fish for information or require the responding party to provide a statement of all its proof. Tex. R. Civ. P. 197.1; *K-Mart v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996). Plaintiff reserves the right to fully develop testimony at deposition and/or trial.

22. Please state when and in what Parish you received the following:

- (a) First Communion
- (b) Confirmation

ANSWER:

May 13, 1973 at Our Lady of St. John.

23. State the name and location of all churches (including all Catholic parishes) that you have ever attended. Please state the general dates of attendance for each.

ANSWER:

Plaintiff objects to this Interrogatory as being over broad, global, vague and harassing. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996); *National Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993). What Defendant is seeking is a fishing expedition that is not allowed under the Tex. R. Civ. P. 196.1. *Dillard Dept. Stores, Inc. v. Hall*, 909 S.W. 2d 491, 492 (Tex. 1995). Plaintiff further objects to this entire Interrogatory on the grounds that it has no temporal limitation. Therefore, the information sought is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the lack of temporal limitation makes any effort to answer it unduly burdensome and harassing. Subject to and without waiving these objections, Plaintiff attended Our Lady of St. John.

MONICA BAEZ, ELODIA FLORES,
MARY ANN GASPIN, RAYMOND
DEANDA, and ALFRED DEANDA

VS.

THE ROMAN CATHOLIC ARCHDIOCESE
OF GALVESTON-HOUSTON

§ IN THE DISTRICT COURT
§
§
§
§ OF HARRIS COUNTY, TEXAS
§
§
§ 215th JUDICIAL DISTRICT

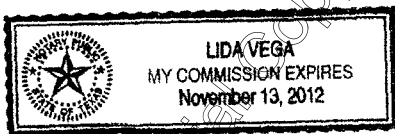
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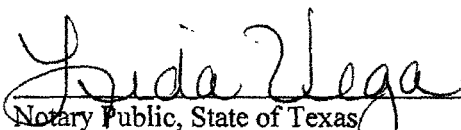
STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public, on this day personally appeared MONICA BAEZ, who, being by me duly sworn, on her oath deposed and said that she a Plaintiff in the above-entitled and numbered cause; that she has read the foregoing Interrogatory answers; and that every statement contained therein is within her personal knowledge and is true and correct, except that information contained in answer to Interrogatories regarding experts, legal contentions, trial witnesses and persons with knowledge of relevant facts which answers are based on information provided by other persons.


MONICA BAEZ

SWORN TO AND SUBSCRIBED BEFORE ME on the 7th day of December 2010, to certify which witness my hand and official seal.




Notary Public, State of Texas

My commission expires 11/13/2012

No. 14-12-00013-CV

In the First or Fourteenth Court of Appeals
Houston, Texas

In re Archdiocese of Galveston-Houston,
Relator.

AGREED MOTION TO DISMISS

On a Petition for Writ of Mandamus
215th Judicial District Court of Harris County, Texas
Trial Court No. 2010-40506

To the Honorable Court of Appeals:

The relator, the Archdiocese of Galveston-Houston (**the Archdiocese**), and the real parties in interest (the plaintiffs in the court below) have reached a settlement in this matter. For that reason, the Archdiocese asks the Court to **dismiss** this proceeding. **The real parties in interest agree to this motion.**

— END OF MOTION —

Dated: February 23, 2012

Respectfully submitted,
VINSON & ELKINS LLP

/s/ Robert M. Schick

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Attorneys for the Archdiocese

Certificate of Service

I certify that on February 23, 2012, a true and correct copy of *Agreed Motion to Dismiss* were sent to the following individuals as indicated:

By electronic service:

SLOAN, BAGLEY, HATCHER & PERRY LAW FIRM

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3000 Smith Street, Suite 4

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Attorney for real parties in interest

By electronic filing in

No. 2010-40506:

Hon. Steven E. Kirkland

215th Judicial District Court

201 Caroline, 13th Floor

Houston, Texas 77002

Respondent

/s/ Jennifer H. Davidow

Jennifer H. Davidow